

REPORT
OF THE
ATTORNEY-GENERAL
OF THE
STATE OF FLORIDA,
FOR THE PERIOD
BEGINNING JANUARY 8, 1889, AND ENDING
MARCH 18, 1891.

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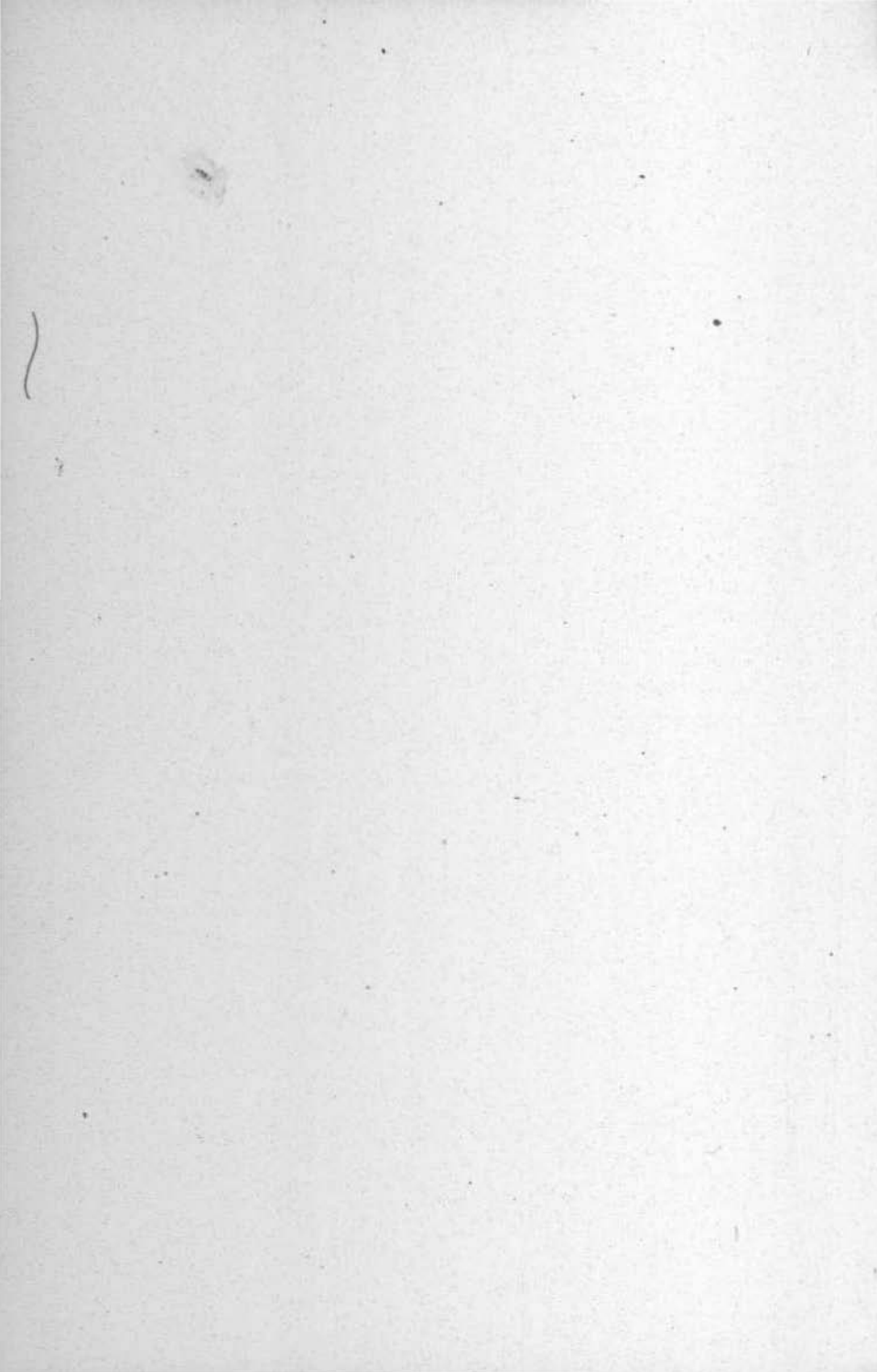
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ATTORNEY-GENERAL'S OFFICE,
TALLAHASSEE, FLA., March 18, 1891. }

*To His Excellency, Francis P. Fleming, Governor of
Florida :*

In obedience to the requirements of the Constitution of this State, I have the honor to submit the following report of the matters pertaining to the office of Attorney-General for the two years last past, and to the present date. Important litigation commenced by me in December, A. D. 1890, and to be argued and submitted to the Supreme Court at the January Term, A. D. 1891, and of which if decided in time, I desired to make mention, has delayed the issuing of this report. I also respectfully submit some suggestions as to needed legislation on certain subjects.

The correspondence of this office has been very large, and while much of it was of a kind and related to matters upon which the law does not make it the official duty of the Attorney-General to act, or give advice, still it could not be wholly ignored, and the rule of the office that all communications should be acknowledged, has been adhered to, as far as practicable. While the Constitution and the statute does not make it the official duty of the Attorney-General to advise or give opinions except to the Governor and to the officers of the Executive Department and to State Attorneys, yet letters are daily received from county, city, town and school officials, as well as private citizens, asking advice as to some matter of official duty, or for the construction of some clause of the law, and a large amount of work is thus imposed upon the office. I have performed regularly the routine duties of my office, representing the State in all cases in the Supreme Court of the State, reporting the decisions of that court, and advising in matters of law the Governor and the officers of the Executive Department.

CASE OF JAMES DEAN, SUSPENDED.

Section 15, Article IV, of the Constitution, gives the Governor the power to suspend from office all officers that shall have been appointed or elected, and that are not liable to impeachment, for malfeasance or misfeasance in office, and for the other causes therein named. Under such authority, your Excellency, by an Executive order, of date the 23d day of July, A. D. 1889, suspended for malfeasance in office, James Dean, at that time the County Judge of Monroe county, in this State, from said office of County Judge, "until the adjournment of the next session of the Senate," and prohibited by such order the said Dean, "from performing the duties, or exercising the functions of said office of the period aforesaid." A. de Lono was then appointed County Judge of Monroe county, until the end of the next session of the Senate, and on the 7th day of August, A. D. 1889, a commission was issued to said A. de Lono to be such County Judge. In defiance of the Executive order aforesaid, James Dean continued to act as County Judge of Monroe county, and refused to give possession of the County Court seal, the books and papers, documents and office furniture pertaining to said office of County Judge, to A. de Lono, who was rightfully entitled to their possession. The matter being brought to my attention sometime afterwards by Mr. A. de Lono, I filed in the Supreme Court, on the 4th day of November, A. D. 1889, a petition praying that a writ of mandamus issue to said Dean, commanding him to turn over to A. de Lono, as County Judge, the seal and all books, etc., belonging to the said office of the County Judge. This he did in compliance with the terms of said writ. The action of James Dean in this case was in flagrant disregard of executive authority under the Constitution, and such action in the future in like cases should be made by law a felony, punishable by an adequate penalty.

RAILROAD COMMISSION CASES.

The State of Florida *ex rel.* the Attorney-General vs. The Jacksonville, Mayport & Pablo Railway and Navigation Company, and The State of Florida *ex rel.* the Attorney-General vs. The Florida Midland Railroad Company.

The Railroad Commission by its rules requires all com-

mon carriers by rail in the State of Florida to make annual reports to it on the first day of October of each year, for the current year preceding, ending June 30. These annual reports are also to contain a statement of the organization, capitalization, traffic, earnings, expenses, and such other matters connected with the organization and operation of the common carriers by rail, as are required by the Railroad Commission, and are to be made in conformity with certain forms prescribed by the commission and delivered by them to each common carrier for making such reports.

The two companies above named failed or refused to make on the first day of October, A. D. 1889, their annual reports for the current year ending June 30, 1889, and the Commission, after waiting for sometime upon them for such reports, directed me to institute proceedings in mandamus against the said companies to compel them to make such reports. On the 29th day of July, A. D. 1889, I filed in the Supreme Court a petition for a writ of mandamus against both of said companies, to compel them to make such reports to the Railroad Commission and to observe the requirements as to the statement relative in their organization, capitalization, etc. This they did to compliance with the mandate of the writ of mandamus, and paid the costs of the proceedings.

The State of Florida *ex rel.* the Attorney-General vs. The Silver Springs, Ocala & Gulf Railroad Company, and
The State of Florida *ex rel.* the Attorney-General vs. the Atlantic & Western Railway Company.

Among the general rules of the Railroad Commission for the government of railroads in this State is one requiring each railroad company to make and file in the office of the Commission a monthly report of its earnings and expenses according to a form prescribed by the Commission. It is obvious that this is important information to the Commission in its dealings with each railroad in the State. The Atlantic & Western Railway Company failed or refused to make such reports to the Commission for the months preceding the 20th day of August and September, A. D. 1889, and for the months of October, November and December, A. D. 1889, and for the months of January, February and March, A. D. 1890. The Silver Springs, Ocala & Gulf

Railroad Company failed or refused to make such monthly reports of earnings and expenses to the Railroad Commission for the month preceding the 20th day of September, A. D. 1889, and for the months of October, November and December, A. D. 1889, and for the months of January, February and March, A. D. 1890. The Commission afterwards directed me to institute mandamus proceedings against said companies to compel a compliance with the said rules as to such monthly reports. On the 29th day of July, A. D. 1890, I filed in the Supreme Court a petition for a writ of mandamus against each of said companies to compel them to make such reports of their earnings and expenses for each of the months above named. In response to the mandate of the writ each of said companies forwarded to the Commission such reports as was required of them, and paid the costs of the proceedings.

The State of Florida *ex rel.* the Attorney-General vs. the Florida Central and Peninsular Railway Company.—
Mandamus Rates on Transportation of Phosphates.

By direction of the Railroad Commission I instituted mandamus proceedings against the above company in the Supreme Court on the 24th day of December, A. D. 1890, to compel the company to carry phosphates and phosphate rock, etc., on all its lines of railroad in the State of Florida at and for the rates and tolls prescribed for it by the said Commission. This the said company was refusing to do at that time, and is still refusing to do. The rate fixed by the Commission for transporting such phosphates from Dunnellon, a station on the line of road of the Silver Springs, Ocala & Gulf Railroad Company, to Ocala is fifty-five cents per ton, car load lots, and the rate prescribed by the Commission for transportation of such articles from Ocala to Fernandina is one dollar and ten cents per ton, car load lots. The Florida Central & Peninsular Railway Company charged, and is still charging, other and higher rates than those fixed by the Commission, viz: from Ocala to Fernandina, a charge of one dollar and forty-five cents per ton, car load, being an excess over the Commission rate of thirty-five cents per ton. Estimating the product of the Dunnellon mines, of phosphates and phosphate rock, at twenty-seven thousand tons for twelve months past, and it is obvious that this ex-

cess charge of thirty-five cents per ton, if improperly made, operates as a heavy tax upon this phosphate industry. If the Commission rate were exceeded to the same extent by all the railroads in this State which in the near future will carry phosphates over their lines of road, it is evident that the sum total of the excess charges would run into the many thousands of dollars. It is estimated by a competent judge that the production of phosphates, etc., in Florida, for shipment in the next twelve months, will reach 200,000 tons.

The return of the said company to the writ of mandamus issued against it from the Supreme Court, requiring it to show cause why they should not observe the Commission rate on phosphates, set up two grounds of defense against such rate: First, that it had carried phosphates from Ocala to Fernandina, and to the station at Fernandina where freights destined to Fernandina were deliverable, at and for the Commission rate, but that beyond such station, and at Fernandina, on the waters of the ocean were certain terminal facilities, where freight destined for shipment out of the State of Florida were delivered by said company; that these phosphates were to be shipped out of the State of Florida, and extra expense was thus incurred, and that these terminal facilities were charged with forty-seven thousand and five hundred dollars of indebtedness, and held in trust by H. R. Duval, and to pay this indebtedness, all freight passing over and through these terminal facilities were subject to certain fixed charges.

Second, that the carriage of phosphates from Ocala to Fernandina was a part of the inter-state commerce of the country, and not subject to regulation as to its carriage by the State Railroad Commission. The case was argued in the Supreme Court on the 19th day of February, A. D. 1891, by the respective counsel for the State and the railroad company, and the questions submitted to the court will receive an early determination. The question of inter-state commerce raised in this case is an important one for all shippers in this State. The line between inter-state commerce and commerce within the State is uncertain, and it is not easy to locate the point where State commerce ends, and inter State Commerce begins. The later decisions rests the determination of such questions upon the peculiar facts of each case. Where the carriage of freight is *continuous*, under a single shipment or consignment through and out of the State, it seems to be properly denominated part

of the inter-State commerce of the country, but where the carriage is on a line of railroad wholly in the State of Florida, and ended in this State, as in the above case, under the contract of shipment, upon the bill of lading from Dunnellon to Fernandina, the freight charges being paid by the shipper at Fernandina, it raises the question sharply whether such shipment does not belong to the commerce of this State, subject to regulation by the State Railroad Commission.

The State of Florida *ex rel.* the Attorney-General, vs. the Pensacola and Atlantic Railroad Company.

Among the general rules prescribed by the Railroad Commission for the government of the transportation of persons and property by the railroad companies doing business wholly or in part within the State of Florida, is General Rule numbered 4, which provides that "each railroad company shall post in a conspicuous place, and keep the same continuously posted in each of its stations, a copy of the schedule of freight and passenger rates revised and adopted for the use of such company by the Commission; a copy of all the rules and regulations prescribed by the Commission for the government of the transportation of freight and passengers, applicable to its line of road, and a copy of the official classification; also copies of all changes made, whether the same shall be made by such railroad company or by the Commissioners; also a table of distances between each station." The information intended to be given to the public by such posting is necessary in their daily travel and business with railroads. The above company failed and neglected to comply fully with the requirements of the rule at the stations along the line of its road. The company, if it attempted posting at all, did so by hanging to nails in its offices along the line of its road in pamphlet form, what it should have put up in "placard" or "poster" form, or in placing the pamphlets containing the "rules and regulations," etc., on the shelves in its depot offices.

By direction of the Railroad Commission I instituted mandamus proceedings against the said Pensacola & Atlantic Railroad Company on the 22d day of December, A. D. 1890, to compel it to observe the requirements of said General Rule numbered 4, and to post in a conspicuous place, and keep the same continuously posted, in each of its sta-

tions, a copy of the schedule of freight and passenger rates, revised and adopted for the use of such company by the Commission; a copy of all the rules and regulations prescribed by the Commission for the government of the transportation of freight and passengers, applicable to its line of road, and a copy of the official classification; and also copies of all changes made by such railroad company or by the Commissioners; also a table of distances between each station, as required by the said rule numbered 4.

The Supreme Court filed its opinion in the case on the 14th day of March, A. D., 1891, deciding that the relator was entitled to a peremptory writ against the said railroad company. Upon the question of posting, the court said: "The purpose of Rule 4 in requiring these rules and regulations to be kept posted in a conspicuous place in each station is, that the public may see and read, and thereby inform themselves of the contents of the same. The word "post" is defined by Webster as meaning "to attach to a sign-post, or other usual place of affixing public notices;" and he defines the word "poster" as "a large bill posted for advertising." The meaning of the word "posted," as used in Rule 4, is that the rules and regulations should be advertised in the form of a poster in the railroad stations; or, in other words, that printed in bill or placard form they shall be so attached to something, in a conspicuous place in the stations that they can, in the position in which they are placed or without being removed, be read conveniently by the public."

The court further states the duty of the company as follows: "Of course the duty of the defendant, under Rule 4, is not only to post in a conspicuous place in each station everything within the requirements of the rule, but also to "keep the same continuously posted." There can be no misunderstanding as to the effect of this requirement, or where the obligation of performance rests and a return which should show no further compliance by a railroad company with this feature of the rule than a delivery to the station agents of posters, even of the most satisfactory form, with instructions to post and keep them continuously posted in a conspicuous place in the stations, and that it is informed and believes that they were so placarded and posted at the same time would necessarily be insufficient. It is the duty of the company both to post

and to keep them continuously posted, and the answer fails to show a performance of this duty at any station, even waiving in this connection the deficiencies in the form of some of the papers."

It is but just to the company, however, to say that it stated in its return to the writ of mandamus its willingness to fully comply with the rules of the Commission when indicated by the court, in what manner compliance should be made, and within the past few days I have received a letter from Hon. W. A. Blount, attorney for the railroad company, saying that the company would, at the earliest practicable moment, fully comply with the decision of the court in respect to all the requirements of the rule of the Commission. The prompt settlement of this question is a very satisfactory one, as it removes a cause of contention between the Commission and the railroads.

OTHER MANDAMUS CASES.

By direction of the Railroad Commission I instituted on the 22d day of December, A. D., 1890, mandamus proceedings against

The Pensacola and Atlantic Railroad Company,
The South Florida Railroad Company,
The Western Railway of Florida,
The Florida Midland Railroad Company,
The Atlantic and Western Railroad Company,
The Silver Springs, Ocala and Gulf Railroad Company
and

.The Florida Central and Peninsular Railroad Company,

To compel said companies to submit to the Railroad Commission, in accordance with General Rule numbered 5 prescribed by them, copies of all rate sheets, tariffs and circular orders issued by them for inspection, revision and approval by said Commission, that it may be seen whether they are in violation of law or of the rules and regulations of said Commission. This the above-named companies had at that time failed or refused to do. Since the issuing of the writ in each case, some of the companies have submitted the required copies of such tariffs, etc., to the Commission, and the settlement of the other cases is still pending in the Supreme Court.

A writ of mandamus, on proceedings similar to the one against the Pensacola and Atlantic Railroad Company, as

to posting, etc., by the direction of the Commission to me, was also issued on the 22d day of December, A. D. 1890, directed to the Florida Central and Peninsular Railroad Company, commanding it to observe the requirements of the Commission rule numbered 4, or to show cause, etc. This case is also pending in the Supreme Court.

ORANGE RATE CASES.

Soon after coming into office in January, A. D. 1889, the Railroad Commission directed me to institute proceedings against the Florida Railway and Navigation Company, then in the custody of a Receiver, to recover penalties for violation by that railroad of the rate fixed by the Commission for transporting oranges. Suits were brought by me at once for five of those violations. Shortly after the commencement of these suits, the said company was discharged from the custody of the Receiver. I did not press these suits further, nor begin new ones for the other violations above named, for the reason that I did not think a recovery could be had in these cases, and such were the views of Judge R. B. Hilton of Jacksonville, whose opinion in writing I took upon this matter, after consultation with your Excellency. Litigation that is expensive in character, promising a protracted course before settlement, and very doubtful as to satisfactory results, is no more to be desired in behalf of a State than by an individual.

The road known as the Florida Railway and Navigation Company was reorganized in the summer of 1889, and is now known as the Florida Central and Peninsular Railroad Company. Since the first conflict with the Commission in the year 1888, over what was known as the "orange rate," this company has observed the rate prescribed for it by the Railroad Commission for transporting oranges.

PENALTY CASES AGAINST THE PENSACOLA & ATLANTIC R. R. CO.

At the January Term, A. D. 1889, of the Supreme Court four appeal cases from Gadsden county and one from Jackson county, wherein the Pensacola and Atlantic Railroad Company was appellant, and the State of Florida was appellee, were decided. In the court below the State had instituted several actions against the said company to recover penalties under the statute approved June 7, 1887, and commonly known as the Railroad Commission act. There were penalties adjudged in each case against the company.

The pleadings were similar in substance in all the cases. The Supreme Court selected one case for decision, being a type of all, appealed by the company from Gadsden county. This case was based upon a violation by the said company of the passenger rate prescribed for it by the Railroad Commission, in that it charged more for carrying a passenger from River Junction to Marianna than was allowed by the Commission rate. The history of the pleadings may be stated in the language of the court: "The declaration in one of the Gadsden county cases, which we take as a type of all, alleges that the railroad company is a body corporate, organized under a special statute of this State, approved March 4, 1881, (Chapter 3334) and operating a railroad from Pensacola to River Junction, both of which points are in the State, and that on a certain day in April of the year 1888, it did 'wilfully charge, collect and demand and receive' of a person, naming him, for transporting him as a passenger from River Junction to Marianna, another point on the road a distance of twenty-six miles, the sum of \$1.25, and that this sum was more than three cents per mile, the rate prescribed by the Railroad Commissioners, and that the sum so collected was more than a fair and reasonable rate of toll or compensation for the transportation of the passenger, and that eighty cents, the sum which the company was allowed by the above rate prescribed by the Commissioners, (and a special rule as to amounts ending in other figure than 5 or 0) to charge, collect and receive, was a just and reasonable rate of compensation; and that by thus wilfully collecting and receiving the stated excess over and above what it was allowed by the Commissioners' rules to charge, collect and receive, the railroad company became and was guilty of extortion, and of a violation of the rules and regulations prescribed and published by the Commissioners, by which rules and regulations the Commissioners made, among others, a schedule or tariff of just and reasonable rates for the transportation of passengers on appellant's railroad.

"It is also alleged that the Commissioners gave notice to the principal officer of the railroad company of this violation, and directed the company to make reparation to the passenger for the injury and wrong so done him, by refunding to him the excess of forty-five cents, within thirty days, as prescribed by the statute, but it failed and refused to do so, and thereby forfeited to the State and incurred a penalty of five thousand dollars.

"To this declaration the railroad company interposed four pleas, and the State demurred to them as sufficient in law. The demurrer having been sustained, and the company not electing to plead over, judgment was entered, the Circuit Judge fixing the penalty at the amount indicated above."

The third plea of the railroad company was "that it could not pay the expenses of operating its road by charging for transportation of persons and things the rates fixed for it by the Railroad Commissioners, or by charging less rates than those charged by it to the passenger named."

The demurrer of the State admitted the averments of this plea to be true, and upon an elaborate opinion the court held that "the demurrer of the State in so far as it is applicable to the third plea, should have been overruled." The judgment of the Supreme Court was: "In view of the conclusions announced as to the third plea, the judgment in each of the cases mentioned in the first paragraph of this opinion must be reversed and a new trial granted. Judgments will be entered accordingly."

The immediate point decided in these cases was, that upon the admission made by the State in its demurrer to the company's third plea, an enforcement of the passenger and freight rate prescribed by the Railroad Commission for said company "would amount in law and in fact to taking the property of the company without just compensation," and the action of the Commission would under such circumstances be an infraction of the provision of our declaration of rights (§12) that no person shall be deprived of his property without due process of law, nor shall private property be taken without just compensation.

The court further decided that where the question arises whether or not the rates fixed by the Railroad Commission, considered as a whole, will prove remunerative to the company, and there is room for intelligent difference of opinion on the question, the court will not substitute its judgment for that of the Commissioners, "but the tariffs as fixed by the Commissioners must, in so far as the courts are concerned, be left to the test of experiment."

This opinion has been somewhat misunderstood. The court did not decide that the company was not *in fact* earning operating expenses. What it decided was simply that a railroad could not be compelled to carry at rates which did not pay operating expenses, which fact was admitted by the State's demurrer. As to a future recovery

against the company, the Supreme Court in its opinion says: "Whether or not, as a matter of *fact*, the rates prescribed by the Railroad Commission will, including also its earnings from all sources of commerce beyond the control of such Commissioners, pay its operating expenses, is something which we are not called upon to express an opinion on. What we say is based simply upon *the admission made by the demurrer to the third plea*. Upon an issue being joined on this plea, every source of income of the railroad company can be inquired into, and the necessity and reasonableness of every expense investigated and settled. It is not, as a matter of fact, to be presumed, outside the admissions of this demurrer, that the Commissioners would impose upon this railroad a rate of three cents under the circumstances indicated by the plea, if they thought, considering also the rates of freight adopted by them, that the company could not pay its operating expenses without charging at the passenger rate it has charged in this case. Under the statute the burden will be upon the company to make out a *prima facie* case sustaining its plea before the State will be called upon to introduce any evidence, and if this be done by the company, the State must then, through the instrumentality of its Commissioners and any other proper means, establish the justice of the action of the Commissioners in fixing the schedule of *passenger and freight rates* against the arraignment which the company has made of them in its third plea."

After the decision rendered in these cases, I joined issue in behalf of the State upon the company's third plea in each case. I agreed with Hon. W. A. Blount, attorney for the railroad company, to select the Jackson county case for trial, and let all the other cases abide the decision in that case. This was obviously proper in view of the similarity of the questions in each case. The illness of Judge McClellan, of the first Judicial Circuit, rendered a trial impossible at the Spring Term of 1889. I attended the Fall term of Jackson Circuit Court, Judge Walker of the Second Circuit, presiding, and met there the attorney for the company, but found it impossible to arrange a trial of the case, and the same was continued to the next term by consent of the attorneys for the State and the company. The case was again continued by consent from the Spring term of 1890, to the Fall term of 1890, of Jackson Circuit Court. Mr. Blount had already suggested to me the pro-

priety of dismissing these suits in view of the fact that the Railroad Commission had after the decision of the Supreme Court above cited raised the passenger rate for said company to four cents per mile, which was acceptable to the company, and that the company was then carrying freight and passengers at and for the rates fixed by the Commission. He subsequently addressed a letter to your Excellency upon the subject, suggesting the above facts and the propriety of dismissing these suits. This letter was referred to the Railroad Commission, and the conclusion reached by both the Commission and your Excellency was that you were not empowered by law to authorize a dismissal of the suits. It was fully understood then by this office and Mr. Blount that the case would be tried at the Fall term of the court, A. D., 1890, at Marianna. Every preparation was made by the State and the Railroad Commission for the trial of this case. Judge E. J. Vann, a member of the Commission, went with me to Marianna at the Fall term of the Circuit Court for Jackson County, accompanied by Mr. Ward, Secretary of the Commission. Mr. Blount and Mr. J. H. Carter were present as attorneys for the railroad company, with such of the officers of the Louisville and Nashville Railroad Company, as were familiar with the books of such company, as to the earnings and expenses of the Pensacola and Atlantic Railroad Company, of which Louisville and Nashville Railroad Company, the latter company, is a part. Mr. Blount had had subpoenas issued from the clerk's office at Marianna, before the convening of court, for Hons. George G. McWhorter, President of the Commission, E. J. Vann and William Himes, Railroad Commissioners, to appear before said court to testify in behalf of the railroad company, alleging them in his præcipe to be material witnesses for the defense. I had adopted the same means to have Hon. W. D. Chipley, Vice President of the said company and its Land Commissioner, appear and give evidence in behalf of the State of Florida. Colonel Chipley declined to appear as a witness, on the ground, as Mr. Blount stated, that he was not legally compelled to appear; that the subpoena did not run beyond the limits of Jackson County. I did not take Colonel Chipley's deposition, because it did not occur to me, in view of the claim made by the company, that the receipts of the road fell below its mere operating expenses, but that all

the prominent officials of the road would be quick to tender the proof of that fact in open court, and I knew the questions to be gone over in connection with the land matters of the company and other things connected with its management could be reached, but imperfectly by interrogatories directed to a distant witness. Because of the absence of Colonel Chipley, the State moved for a continuance to the next term of the court, which motion the company's attorneys resisted on the ground of the great expense and inconvenience it inflicted upon the company. The court evidently felt that the company was estopped from impeaching the very method it had adopted to get the Railroad Commissioners into court in its own behalf and granted the continuance. I have prepared interrogatories to be propounded to Colonel Chipley as Land Commissioner of the said company, in reference to the amount of lands received by the Pensacola and Atlantic Railroad company, both from the general government and from the State of Florida, the amount realized from sales of such lands and other matters connected therewith, and which may bear in an important way upon the question of the earnings of the company, and the reasonableness of the Commission rates. I shall, also, upon the assembling of the legislature, submit a bill providing that in all cases where the State is a party, that subpoenas shall run throughout the State. The Pensacola and Atlantic Railroad Company has been, for quite a while, charging according to the Commission rates, and there is no present conflict as to existing rates between the company and the Commission. As nearly all of the railroads in this State have been the recipients of large land-grants, and as most of them claim to be earning less than operating expenses, and yet many citizens in the State think the charges still too high, it becomes important to settle the question how far the Railroad Commission and the courts can consider the revenues derived from the sales of their lands in determining what are reasonable rates of charges.

Besides the cases in Gadsden and Jackson counties, there are others pending in other counties in West Florida against this same company, and involving similar questions, and which abide the result in the Jackson county case.

INTERNAL IMPROVEMENT FUND.

The Plant Investment Company brought suit in the United States Circuit Court against the Trustees of the Internal Improvement Fund *et al.* for about eighty thousand acres of land as the immediate object of their suit, and further, to establish the principle that the large land grant railroads are entitled to indemnity under Chapter 3166, Laws of Florida, approved March 12, 1879, for deficiencies in alternate sections; which, if established, would involve large quantities of lands which the Trustees, under their construction of the statutes making special land grants to railroads, have always refused to concede. The case was decided in favor of the Trustees, on demurrer, in the United States Circuit Court, and the Plant Investment Company has taken an appeal to the Supreme Court of the United States.

The Trustees of the Internal Improvement Fund brought suit against one Bennett, in the United States Circuit Court, to enjoin the sale by Bennett under execution from that court against the Southern Inland Navigation & Improvement Company, of one million, three hundred and sixty-six thousand, six hundred and sixty-five acres of land, and such injunction was granted to them by said court.

The New York & Havana Construction Company vs. the Trustees of the Internal Improvement Fund *et al.*

The Trustees have obtained an order from the United States Circuit Court dismissing this suit.

There is also pending in the Supreme Court of Florida a suit by the Jacksonville, Tampa & Key West Railway Company against the Trustees of the Internal Improvement Fund *et al.*, which was decided in favor of the Trustees in the court below. There is pending in the Circuit Court for Duval county a suit by said Trustees against the Florida Central & Peninsular Railroad Company to determine the liability of said company for sinking fund, and to obtain cancellation of certain bonds.

There is pending in the Circuit Court for Leon county a suit by Charles S. Adams, as administrator of the estate of John S. Adams, deceased, against the Trustees of the Internal Improvement Fund on account of coupons

claimed by him as such administrator, of which the Trustees had previously obtained possession as the property of the Fund.

In the above litigation, arising before my term of office and since, in which the Trustees of the Internal Improvement Fund were and are interested, they were represented by the Hon. C. M. Cooper, of Jacksonville.

J. R. Parrott, as Receiver, etc., vs. the Railroad Commissioners.

On the 29th day of August, 1890, the Railroad Commission fixed the passenger rate on the Charlotte Harbor Division of the Florida Southern Railway Company from five cents per mile for full passenger fare, and two and one-half cents per mile for half fare to four cents per mile for full fare, and two cents per mile for half fare, and ordered the same to go into effect on the 8th day of September, 1890. Mr. J. R. Parrott, as Receiver of the Florida Southern Railway Company, refused to obey such order in operating the Charlotte Harbor Division of said railroad, and petitioned the United States Circuit Court as to what course he should take as such Receiver in regard to the passenger rates so fixed by the Commission. That court referred the matter to a master, and upon his report and the testimony taken by him on the 24th day of October, 1890, made an order "that the Receiver, J. R. Parrott, be and is instructed to promptly take such steps in the matter under the law as will test the right of the Railroad Commissioners of the State of Florida to enforce their orders as to passenger rates on said Charlotte Harbor Division, and that pending final adjudication the Receiver do charge for the carriage of passengers on the Charlotte Division the same rates in force prior to said order of the Railroad Commissioners."

An act of Congress, approved March 3, 1887, provides: "Sec. 2. That whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."

I thought that the Receiver should be remitted to the State courts to pursue his remedy, as laid down in Chapter 3862, Laws of Florida, and after some correspondence with the attorneys for the Receiver, I filed in the United States Circuit Court for the Northern District of Florida a petition setting up all the facts in the case, asking that the order of October 24 be rescinded, and that the Receiver be ordered to pursue his remedy in the State courts. The court denied this petition, and on the 14th day of January, 1891, J. R. Parrott, as Receiver, etc., filed his bill in the said United States Circuit Court "for the purpose of determining the justness, fairness and reasonableness of the rates of toll and compensation prescribed by said Circular No. 31 of the said Railroad Commissioners, and prays a decree of this honorable court that the rates prescribed by said Circular No. 31 are unjust, unfair, unreasonable and not in force and effect, and further prays that the said George G. McWhorter, Enoch J. Vann and William Himes, as Railroad Commissioners of the State of Florida, and their successors as such Railroad Commissioners, may be restrained by an injunction issuing out of this honorable court, from promulgating or putting in force or effect the rates prescribed by said Circular No. 31, and from instituting in their names, or in the name of the State of Florida, any action, suit or proceeding to compel the observance of said rates, or to recover any penalties from your orator, or any of his agents or servants, for the violation of said rates."

The matter is pending in said court, and I am now preparing, with the assistance of the Railroad Commissioners, their answer to the Receiver's bill.

PHOSPHATE SUITS.

Chapter 3826, Laws of Florida, approved June 7, 1887, granted to H. Greeno and others the right to dig, mine and remove from the beds of the navigable streams and waters of this State, phosphate rock and phosphatic deposits. They were not, however, to interfere with the free navigation of such streams and waters, nor the private rights of citizens residing upon or owning the lands upon the banks of the same.

This grant was upon the express condition that the grantees should pay to the State of Florida the sum of one dollar per ton for every ton of phosphate rock and phosphatic deposits dug, mined and removed from said navigable

streams and waters of the State. Section 3 of said act provides: "Before commencing operations under authority of this act said grantees and their associates shall file or cause to be filed in the office of the State Comptroller a bond in the penal sum of fifty thousand dollars, conditioned that said grantees and their associates shall make true and faithful returns to said Comptroller annually on or before the first day of October of the number of tons of phosphate rocks and phosphatic deposits dug, mined and removed by them from the beds of the navigable streams and waters of the State, and shall punctually pay to the State Treasurer annually on the first day of October \$1 per ton for every ton of phosphate rocks and phosphatic deposits by them dug, mined and removed from the beds of the navigable streams and waters of the State during the year preceding. Said bond to be renewed annually and approved by the Attorney-General. * * * And any other persons who may incorporate under the laws of the State of Florida shall have the same rights, privileges and franchises granted to said persons by this act upon their complying with the requirements provided for in this act."

Various persons incorporated under the above chapter, into companies and commenced the business of digging, mining and removing phosphate rock, etc., from the navigable waters and streams in this State. Suits were brought in November last against the Black River Phosphate Company mining, etc., in Clay county, in the waters of Black river, and against the Peace River Phosphate Company, the Arcadia Phosphate Company, the DeSoto Mining Company, and the Peruvian Phosphate Company. The last company mining, etc., in the waters of the Alafia river, in Hillsborough county, and the other three companies mining in the waters of the Peace river in DeSoto county. In these suits I was assisted by Messrs. A. W. Cockrell & Son, of Jacksonville, who were specially employed by your Excellency for that purpose. In the case of the Black River Phosphate Company, Judge W. B. Young, of the Fourth Judicial Circuit, sustained the demurrer interposed by the defendant company to the bill filed in behalf of the State. An appeal was taken to the Supreme Court, and on the 28th day of February, 1891, the case was argued in the Supreme Court by me and Col. A. W. Cockrell, for the State of Florida, appellant, and Col. H. Bisbee

and Hon. C. M. Cooper, for the phosphate company, appellee. Apart from the question of the sufficiency of the allegations of the bill, raised by the demurrer, the further and more important question was discussed at length as to the effect of what is commonly known as the riparian act of 1856, being Chapter 791 of the Laws of Florida; and the further question of the title of the State of Florida to the beds and soils of Navigable waters within her jurisdiction, whether tidal or non-tidal in their character.

The case is pending in the Supreme Court for decision. The other suits are not being at present prosecuted, the State's counsel deeming it best to wait upon the decision of the Supreme Court in the case on appeal. These companies had made no returns to the Comptroller, as required in said act, and had paid no royalty as therein provided, and the suits were brought to recover the value of the phosphate rock and phosphatic deposits that had been dug, mined and removed from the respective navigable streams and waters in which they were operating.

LEGISLATION SUGGESTED.

Section 3 of Chapter 3826, Laws of Florida, relating to mining phosphates, etc., requires the giving of bond by those persons who dig, mine and remove phosphate from the navigable streams and waters of the State. After consultation with your Excellency, I approved the bond tendered by the Gulf Mining & Manufacturing Company. This bond was in the penal sum of fifty thousand dollars, and was signed by the said company as principal, and by the American Surety Company of New York, as surety. These bonds of surety and guaranty companies are accepted now the country over, by express and railroad companies, and banks, as the best form of bond to be given by their employees and officials. Besides, companies organizing every month to dig and mine phosphate may find it difficult or impossible to give personal security on their bonds. It may be best to provide by statute that surety and guaranty companies may be approved upon such bonds as sureties. In the case above, I obtained the opinion of a leading bank in New York as to the solvency of such surety company, before approving the said bond.

Legislation is needed to correct, not the growing, but the fully grown evil, of divorces. Divorces are obtained now with as much dispatch as marriages are made. The issues

in suits for divorce should be tried as in actions at law. There should be a public jury trial. This alone would half cure the evil. The "desertion" provided for now by statute as a ground of divorce, should be made for the period of two years, instead of one.

I have received from several of the Circuit Judges reports and suggestions concerning defects or amendments of legislation, as required by §13, Art. V. of the Constitution.

Those who expressed an opinion on the matter concur, that it would be of much saving to the State in the matter of expense, if the county judges were given jurisdiction in inquisitions of lunacy.

Judge W. B. Young of the Fourth Judicial Circuit, sent to me with his report four bills for submission to the legislature: one to define the duties of the judges of the Circuit Courts in charging juries; one to regulate proceedings upon forfeited undertakings of bail; one to provide for the punishment of defaulting jurors; and one to provide for the issue and return of executions upon judgments of courts of record. I shall submit these bills to the legislature for its consideration.

In his report of 1889, my predecessor, Hon. C. M. Cooper, made the following suggestion: "Legislation is needed to authorize sentences in the alternative, of a certain fine or a certain imprisonment of persons convicted of minor offenses. At present there is no way of releasing a person committed for a fine which he is unable to pay, except by the action of the Pardoning Board, which often results in undue hardship to the prisoners, unnecessary expense to the counties, and an apparently large number of pardons by the imposition upon the Pardoning Board of functions which should be given to the courts." I renew the suggestion. The evil is one that should be corrected promptly.

Section 20 of Chapter 3862, Laws of Florida, should be amended so as to authorize the Railroad Commissioners to employ counsel to assist the Attorney-General in penalty cases against railroads, where the case is pending in other than the county where that officer holds his office. These cases are brought by the State to inflict heavy penalties on railroad companies for wilfully violating the rates fixed, in the public and the roads interest, by the Commissioners. The railroads in addition to their general counsel always employ local counsel; attorneys who reside in the county, or at least those who know the temper and bias of the peo-

ple. The State should at least be as well informed as the railroads in these contests. No litigant in a county other than his own in an important private suit or action, ever thinks of going to trial without the aid of local counsel, to assist in selecting the jury, etc. Some citizens in this State do not look upon the Railroad Commission as an unmixed blessing, and some have strong feeling against it. The State in these jury trials should be fully informed of the bias and sentiment of the particular locality. Besides, such trials are apt to be protracted, involving many difficult and new questions, as these railroad problems are in their formative state, and this office should not be handicapped for want of a few dollars to employ such assistant counsel. In the penalty cases against the Pensacola and Atlantic Railroad Company I am individually responsible to Mr. Benjamin Liddon, of Marianna, who I retained as local counsel in that case, for his fee, and will pay same, unless the Legislature provides otherwise. The Railroad Commissioners have decided that their authority to employ assistant counsel under the above section does not extend to penalty cases.

It should also be provided by law, that the Governor may, in his discretion, upon the recommendation of the Attorney-General, authorize the Attorney-General to dismiss any suit or action commenced by him upon the order of the Railroad Commissioners. The Railroad Commissioners declare they have not this power. In a general sense it may be said the Attorney-General has control of litigation begun by him. Still it is advisable, I think, that any proceeding that is dismissed, be done by authority in writing from the Governor. Justice and good sense may dictate that litigation be abandoned in certain cases against railroads, and if so it should be done upon the authority of the Chief Executive.

I have had several requests from employes of railroads in this State, asking that I call to the attention of the legislature the fact that hardships are imposed upon them in the great lengths of time they are kept on their trains, in the capacity of conductors, engineers and brakemen; that they are kept at times on their trains from twenty to thirty hours, with but few hours for rest; that as a consequence they are "tired out" in the performance of

their duties, and that their faculties become so exhausted as to render a performance of their duties perilous to the public. I respectfully call to the attention of the legislature the complaints of these employes and officials of the railroads, that proper legislation may be had if deemed advisable, or the rights of such employes, etc., and the safety of the public demand it.

I respectfully suggest to the legislature that the anniversary of the birth of Jefferson Davis be made a public holiday. Such a legislative enactment will record a memorial of the love of the people of this State towards that departed great man, that will endure as long as the State itself.

All of which is respectfully submitted.

W. B. LAMAR,
Attorney-General.